SBCivil Writ Petition No.2049/2006

Rajput Hotel & Resorts Pvt.Ltd., Udaipur
Vs.
Addl.Distt.Judge No.1,Bikaner & Ors.

Date of Order :: 10th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajendra Mehta]
Mr. R.K.Purohit] for the petitioner.
Mr. Sajjan Singh, for the respondents.

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In a suit preferred by the plaintiff respondent No.2 seeking challenge to appointment of the respondents No.4 to 7 as trustees of Gajner Property Trust by the respondent No.3 (defendant No.1) an application under Section 65 of the Indian Evidence Act was filed on behalf of the petitioner defendant No.6 that came to be allowed and an opportunity was given to the defendant petitioner to produce Director of the company in evidence on 20.9.2005. The Director of the company Shri Vishwa Vijay Singh was out of India, therefore, on 20.9.1995 an adjournment was sought on behalf of the defendant No.6 (petitioner) to produce Shri A.C.Jain, Administrator (Legal Affairs) in evidence. The request aforesaid was rejected on the count that Shri A.C.Jain was not Director of the company and while accepting the application under Section 65 of the Evidence Act a direction was given to produce Director of the company in evidence. The

trial court also closed the evidence of the defendant No.6 on the same day. Being aggrieved by the same the petitioner defendant No.6 preferred a writ petition before this Court wherein an interim order was passed directing the trial court to record the statement of the witnesses of the petitioner on paying a cost of Rs.5000/- to the plaintiff.

The petitioner (defendant No.6) on 19.11.2005 preferred an application under Order 6 Rule 17 read with Section 151 CPC seeking amendment in written statement to bring on record the fact about withdrawal of the share of lease money by the plaintiff in a tune of Rs.27,78,470.13 upto 31.3.2005.

The trial court by an order dated 22.3.2006 rejected the application preferred by the petitioner defendant No.6 under Order 6 Rule 17 CPC solely on the ground that the writ petition preferred by the petitioner closing its evidence is still pending before the High Court and in event of acceptance of application under Order 6 Rule 17 read with Section 151 CPC the entire proceedings before the trial court shall have to take place afresh. Being aggrieved by the order aforesaid this petition for writ is preferred.

An application under Article 226(3) of the Constitution of India is preferred on behalf of the

respondent No.2 (plaintiff) and today the matter came up for orders on the application aforesaid, however, with consent of parties the petition for writ is heard finally.

The trial court dismissed the application under Order 6 Rule 17 CPC preferred by the petitioner defendant No.6 solely on the count that the writ petition preferred giving challenge to the order dated 20.9.2005 is still pending before this Court. It is pertinent to note that in the writ petition aforesaid by an interim order a direction was given by the Court to record statements of witnesses of the petitioner and those statements have already been recorded. The trial court, if was of the view that during pendency of the writ petition preferred by the plaintiff defendant the application under Order 6 Rule 17 CPC should not have been considered on merits, then the appropriate course was to keep the application pending till disposal of the writ petition. The trial court instead of it dismissed the application on the count that in event of acceptance of the application under Order 6 Rule 17 CPC the trial court have to proceed with the matter afresh. In my considered opinion that was not the course appropriate. The trial court should have kept the application pending till disposal of the writ petition preferred by the petitioner defendant No.6 giving challenge to the order dated 20.9.2005 or to have decided the same on merits.

In view of it, this petition for writ is allowed. The order dated 22.3.2006 rejecting the application under Order 6 Rule 17 read with Section 151 CPC preferred by the petitioner defendant No.6 is quashed. The application under Order 6 Rule 17 read with Section 151 CPC preferred by the petitioner defendant No.6 is restored. The trial court is directed to consider the same afresh in accordance with law within a period of two months from today.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.